

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

UNITED STATES OF AMERICA,	:	Case No. 3:22-cr-00029(2)
	:	
Plaintiff,	:	District Judge Walter H. Rice
	:	Magistrate Judge Caroline H. Gentry
vs.	:	
	:	
MCKENZIE CATON,	:	
	:	
Defendant.	:	

REPORT AND RECOMMENDATION¹

This case came before the Court for plea proceedings on February 16, 2023 following referral to the undersigned pursuant to Fed. R. Crim. P. 59. Assistant United States Attorney Brent Tabacchi appeared on behalf of the Government. Lawrence Greger, Esq. appeared and represented Defendant. Defendant verbally consented to proceeding before the United States Magistrate Judge for the plea hearing.

As an initial matter, the Government filed a Motion to Strike Allegations from the Indictment. (ECF No. 96.) Specifically, the Government moves to strike allegations contained in Count One of the Indictment concerning the quantity of methamphetamine at issue in this case. (*Id.*; ECF No. 6, PageID 9.) At the plea hearing, Mr. Greger stated that Defendant wishes to enter a plea, but only to the amended Count One of the Indictment. (*See* ECF No. 98, PageID 413.) Therefore, the undersigned RECOMMENDS that the Court grant the Government's motion to amend Count One of the Indictment.

¹ Attached is a NOTICE to the parties regarding objections to this Report and Recommendations.

The undersigned examined Defendant under oath as to her understanding of the plea agreement, which Defendant acknowledged in open court. The undersigned also examined Defendant under oath concerning the effect of entering a plea pursuant to that agreement. Having conducted that colloquy, the Magistrate Judge concludes that Defendant fully understands the rights waived by entering a guilty plea and is fully competent to enter a guilty plea.

Based on the foregoing, the Magistrate Judge concludes that Defendant's guilty plea to amended Count One of the Indictment (ECF No. 98, PageID 413) is a knowing, intelligent, and voluntary plea. The Court also concludes that the statement of facts made a part of the plea agreement, the truth of which Defendant acknowledged in open court, provides a sufficient factual basis for a finding of guilt.

It is therefore **RECOMMENDED** that: (1) the Court grant the Government's motion to amend Count One of the Indictment; (2) the Court accept Defendant's guilty plea to amended Count One of the Indictment; and (3) Defendant be found guilty as charged in amended Count One of the Indictment. Anticipating the District Judge's adoption of this Report and Recommendation, the Magistrate Judge referred Defendant for a pre-sentence investigation and continued her on bond.

IT IS SO RECOMMENDED.

March 8, 2023

s/Caroline H. Gentry

Caroline H. Gentry
United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Crim. P. 59(b)(2), any party may serve and file specific, written objections to the proposed findings and recommendations within **FOURTEEN** days after being served with this Report and Recommendations. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendation is based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within **FOURTEEN** days after being served with a copy thereof.

Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981).